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September 30, 2002

Dear Xxxxx:

This letter is in response to your letter dated July 19, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

It was suggested that I write to you by your on-line taxpayer assistance division.

My question is: I recently returned an item to a store in CITY that I originally purchased at a STORE in CITY2. The sales tax was more in CITY and the clerk told me I had to pay the difference because it is against the law for them not to charge me the higher tax rate difference and that if I took the item to a store that had a lower tax rate that store would refund me the difference. Is this a new law? Every other store I have shopped at will just adjust the sales tax difference on the purchase so that it comes out equal to me as the consumer. When I told them about the adjustment I receive elsewhere, they insisted it was illegal.

Please advise. Thank you!

Illinois retailers are businesses who sell tangible personal property at retail to Illinois customers. Illinois retailers are liable for Retailers' Occupation Tax (sales tax) on gross receipts from such sales and must collect the corresponding Use Tax from Illinois purchasers. In addition, Illinois retailers may also incur local Retailers' Occupation Tax liability if sales occur within jurisdictions imposing a local tax. Multiple local taxes can apply depending upon the particular location of the sale. The total tax rate for a sale made in CITY is 7.5% and the total rate for sales made in CITY2 is 6.5%.

Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. Please see the enclosed copy of 86 Ill. Adm. Code 270.115 concerning

jurisdictional questions of the Home Rule Municipal Retailers' Occupation Tax. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State is also immaterial for purposes of local taxes because if the sale occurs in an Illinois jurisdiction imposing a local tax, the local tax will be incurred.

For purposes of determining the location where the "selling" occurs, the regulation governing the Home Rule Municipal Retailers' Occupation Tax, 86 Ill. Adm. Code 270.115, states in Subsection (b)(3): "the place where the property is located at the time of the sale (or subsequent production in Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale."

Although the enclosed regulation (Section 270.115) concerns the Home Rule Municipal Retailers' Occupation Tax, the same principles outlined in this regulation apply to other local taxes administered by the Department (e.g., the Regional Transportation Authority Retailers' Occupation Tax or the County Public Safety Retailers' Occupation Tax).

While your letter says that you returned an item to a store in CITY, it does not say if you received a refund of the purchase price, if you exchanged the item for a like or similar item, or if you received a refund of the purchase price and purchased another item as a replacement. In a returned merchandise situation, the seller should refund all of the sales tax to the customer. See 86 Ill. Adm. Code 130.401(b), enclosed. However, please remember purchases made at a CITY retailer are subject to a higher rate of tax than purchases made in CITY2.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.